

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the Department of Justice and the United States Attorney's Office for the Eastern District of Pennsylvania, and on behalf of the General Services Administration ("GSA") and Ace Moving and Storage Corporation ("Ace") through their authorized representatives. Collectively, all of the above may be referred to as "the Parties."

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Ace is a for-profit corporation incorporated in Pennsylvania and headquartered in Pennsylvania.

B. From 1997 to the present, Ace entered into contracts GS-03F-97011, GS-03F-K0004, GS-03F-K0002, GS-03F-96035 and GS-03F-99003 with the GSA to furnish transportation, labor and related moving services for the GSA and other Federal Agencies in the Commercial Zones of Philadelphia and Harrisburg, Pennsylvania, Luzerne and Lackawanna Counties, Pennsylvania and New Jersey Counties North and South.

C. The United States alleges that during the time period March 1998-May 2002, Ace over billed the United States for various moves under the contracts referenced in paragraph B.

D. Based on the conduct referenced in Paragraph C above, the United States alleges that Ace is subject to liability under the False Claims Act, 31 U.S.C. §§ 3729-

3733, for up to three times the amount of damages caused by ACE's conduct, plus civil penalties, investigation costs and interest.

E. Ace denies the contentions of the United States that its submissions under the above referenced contracts violates the False Claims Act. Ace and its officers, directors, agents and employees do not concede any liability.

F. The United States and Ace mutually desire to reach a resolution of the allegations referenced above, and wish to avoid the expense, delay, uncertainty and inconvenience of continued litigation. This Agreement is neither an admission of liability nor a concession by the United States that its allegations are not well-founded.

ACCORDINGLY, in reliance on the representations contained herein, and in consideration of the mutual promises, covenants and obligations in this Agreement, and for good valuable consideration, receipt of which each party acknowledges, the parties AGREE as follows:

III. TERMS AND CONDITIONS

NOW, THEREFORE, the Parties agree as follows:

1. Ace agrees to pay the United States \$54,000 (the "Settlement Amount"). Payment will be made in 12 equal monthly installments commencing on April 1, 2004 and continuing on the first 1st day of each subsequent month. All payments will be made by electronic funds transfers. The electronic funds transfers will be made pursuant to written instructions to be provided by the GSA, DOJ or authorized representative.

2. Subject to the exceptions set forth below, in consideration of the obligations of Ace set forth in this Agreement, conditioned upon Ace payment in full of the Settlement Amount, and subject to Paragraph 9 below (concerning any bankruptcy

proceedings commenced within ninety-one ("91") days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments) hereby releases Ace, its current and former subsidiaries, divisions, affiliates, predecessors-in-interest, successors and assigns, current and former directors, officers, employees, and agents (collectively, "Releasees") from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733, or common law, or any other statute creating a cause of action for civil damages or civil penalties for submitting or causing to be submitted false claims to the Government under the contracts referenced in Part II, Paragraph B above.

3. Ace fully and finally releases the United States, its agencies, employees, servants and agents from any claims (including attorneys' fees, costs, and expenses of every kind or however denominated) which Ace could have asserted or may assert in the future against the United States, its agencies, employees, servants and agents, related to the investigation of the conduct referenced in Part II, Paragraph C above.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement are any and all of the following:

- (a) Any claims arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) Any criminal liability;
- (c) Any administrative action by the General Services Administration or any other Federal agency to suspend or debar Ace from federal programs;
- (d) Any liability to the United States (or its agencies) for any conduct other than the conduct referenced in Part II, Paragraph C.
- (e) Any claims based upon such obligations as are created by this Agreement;

(f) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by the Defendants (excluding claims based on the conduct referenced in Part II, Paragraph C above).

(g) Any claims based on a failure to deliver items or services due (excluding claims based on the conduct referenced in Part II, Paragraph C above).

(h) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of Ace, who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys Manual), are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the conduct referenced in Part II, Paragraph C above.

Paragraph 4(h) covers only alleged criminal behavior relating to the conduct referenced in Part II, Paragraph C above that is unknown at this time and which could be the subject of a criminal investigation or proceeding in the future. In such a case, the DOJ and/or GSA reserves the right to pursue any civil or administrative claims against those individuals that may apply.

5. The Parties agree that all costs (as defined in the Federal Acquisition Regulation (FAR), 48 C.F.R. § 1-21.205-47) incurred by or on behalf of the Releasees in connection with (a) the matters covered by this Agreement; (b) the United States' audit and investigation of the matters covered by this Agreement; (c) Releasees' investigation, defense of the matter, and corrective actions undertaken in response to the United States' investigation of the matter, including but not limited to related audit work, attorneys' fees

and costs; (d) the negotiation of this Settlement Agreement; and (e) the payment made to the United States pursuant to this Agreement are unallowable costs for government contracting purposes.

6. Nothing in this Agreement constitutes evidence of an admission by ACE with respect to any issue of fact or law arising in the civil Action. ACE specifically denies any liability for the claims asserted in the Civil Action by the United States and Relator.

7. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity, except as noted herein.

8. Ace expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain financially solvent following its payment to the United States hereunder. Further, Ace expressly warrant that, in evaluating whether to execute this Agreement, the Parties: (1) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Ace, within the meaning of 11 U.S.C. § 547(c)(1), and (2) have concluded that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

9. In the event Ace commences, or a third party commences, within 91 days of the Effective Date of this Agreement, any case, proceeding, or other action: (a) under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have any order for relief of Ace's debts, or seeking to adjudicate Ace as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian, or

other similar official for Ace or for all or any substantial part of Ace's assets, Ace agrees as follows:

(a) Ace's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Ace shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Ace's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Ace was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Ace.

(b) In the event that Ace's obligations hereunder are avoided pursuant to 11 U.S.C. § 547, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against Ace for the claims that would otherwise be covered by the releases provided in Paragraph 2. If the United States chooses to do so, Ace agrees: (i) that any such claims, actions, or proceedings brought by the United States (including any proceedings by the General Services Administration or any other Federal agency to suspend or debar Ace from federal programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph, and that Ace shall not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; (ii) not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 180 calendar days of written notification to Ace that

the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) that the United States has a valid claim against Ace and the United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c) Ace acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

10. Each party to this Agreement bears its own legal and other costs incurred in connection with this matter, other than as set forth above in Paragraph 2, including the preparation and performance of this Agreement.

11. Each Party represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

12. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between or among any of the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania.

13. This Agreement constitutes the complete agreement among the Parties. This Agreement may not be amended except by written consent of the Parties.

14. The undersigned individual signing this Agreement on behalf of Ace represents and warrants that he is authorized to execute this Agreement. The undersigned United States signatory represents that he is signing this Agreement in his official capacity and is authorized to execute this Agreement.

15. This Agreement is binding on the successors, transferees and assigns of the Parties.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement, facsimiles of signatures constitute acceptable, binding signatures for purposes of this Agreement.

17. The Parties consent to the United States' disclosure of this Agreement, and information about this Agreement to the public.

On behalf of the United States of America

DATED:

BY: PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

Virginia A. Gibson
Assistant United States Attorney
Chief, Civil Division
United States Attorney's Office
Eastern District of Pennsylvania

Jeffery S. Davidson
Assistant United States Attorney
United States Attorney's Office
Eastern District of Pennsylvania

Of Counsel:

Antigone Potamianos
Assistant Counsel to the Inspector General
Office of Inspector General
U.S. General Services Administration
Washington, D.C.

On behalf of ACE MOVING and STORAGE CORPORATION

DATED:

BY:

ACE Representative

BY:

Fred Alcaro, Esq.
Alcaro & Maguire
590 Rutter Avenue
Kingston, PA 18704

Attorney for ACE